

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

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PLR-122583-09  
Date:  
August 12, 2009

## LEGEND

Company =

State =

Date 1 =

Date 2 =

Dear :

This letter responds to a letter dated April 24, 2009, and subsequent correspondence, submitted on behalf of Company by its authorized representative, requesting a ruling under § 301.9100-3 of the Procedure and Administration Regulations.

## FACTS

The information submitted states that Company is a limited liability company formed under the laws of State on Date 1. Company is not classified as a *per se* corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8). Company and its members represent that Company intended to be classified as a partnership effective Date 2. However, Company did not timely file Form 8832, Entity Classification Election, electing to be treated as a partnership.

## LAW AND ANALYSIS

Section 301.7701-3(a) provides, in part, that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) can elect its classification for federal tax purposes as provided in § 301.7701-3. An eligible entity with at least two members can elect to be classified as either an association (and thus a corporation under § 301.7701-2(b)(2)) or a partnership, and an eligible entity with a single owner can elect to be classified as an association or to be disregarded as an entity separate from its owner.

Section 301.7701-3(b)(1) provides that except as provided in § 301.7701-3(b)(3), unless the entity elects otherwise, a domestic eligible entity is (i) a partnership if it has two or more members, or (ii) disregarded as an entity separate from its owner if it has a single member.

Section 301.7701-3(c)(1)(i) provides, in part, that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b), or to change its classification, by filing Form 8832, Entity Classification Election, with the service center designated on Form 8832.

Section 301.7701-3(c)(1)(iii) provides that an election under § 301.7701-3(c)(1)(i) will be effective on the date specified by the entity on Form 8832 or on the date filed if no such date is specified on the election form. The effective date specified on Form 8832 can not be more than 75 days prior to the date on which the election is filed and can not be more than 12 months after the date on which the election is filed. If an election specifies an effective date more than 75 days prior to the date on which the election is filed, it will be effective 75 days prior to the date it was filed.

Section 301.9100-1(c) provides that the Commissioner may grant a reasonable extension of time under the rules set forth in § 301.9100-2 and § 301.9100-3 to make a regulatory election, or a statutory election (but not more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code, except subtitles E, G, H, and I.

Section 301.9100-2 provides the standards the Commissioner will use to determine whether to grant an automatic extension of time for making certain elections.

Section 301.9100-3 provides the guidelines for granting extensions of time for making elections that do not meet the requirements of § 301.9100-2. Section 301.9100-3(a) provides that requests for relief subject to § 301.9100-3 will be granted when the taxpayer provides evidence (including affidavits described in § 301.9100-3(e)) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

## CONCLUSION

Based solely on the information submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been satisfied. Accordingly, Company is granted an extension of time of 60 days from the date of this letter to file a Form 8832 with the appropriate service center and elect to be treated as a partnership for federal tax purposes, effective Date 2. A copy of this letter should be attached to the Form 8832. A copy is enclosed for that purpose.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the ruling request, it is subject to verification on examination.

Sincerely,

/s/

Curtis G. Wilson  
Associate Chief Counsel  
(Passthroughs & Special Industries)

Enclosures (2)

Copy of this letter

Copy for § 6110 purposes

cc: